

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JAMES H. HUNTER,

Plaintiff,

- against -

(1) DEUTSCHE LUFTHANSA AG,

(2) GLOBAL DEFENSE & TECHNOLOGY
SYSTEMS, INC.,

(3) GLOBAL STRATEGIES GROUP
(UNITED KINGDOM) LIMITED, AN
ENGLISH COMPANY,

(4) GLOBAL STRATEGIES GROUP
HOLDING S.A., A LUXEMBOURG
CORPORATION, and

(5) ETIHAD AIRWAYS P.J.S.C.

Defendants.
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No. 09-3166 (RJD)(MJA)

**DECLARATION OF JAMES
CALLAGHAN**

I, James Callaghan, declare and state as follows:

1. I am an adult legally competent to execute this Declaration, and I have personal knowledge of the facts contained within this Declaration.

2. I am the Executive Vice President Legal Affairs, General Counsel and Company Secretary of Etihad Airways P.J.S.C. ("Etihad"), located at P.O. Box 35566, Head Office, Khalifa City A, Abu Dhabi, United Arab Emirates, and have been employed in this position since May 2009.

3. I have a Juris Doctorate degree and a Masters Degree in Public and International Affairs from the University of Pittsburgh as well as an LL.M. in European and International Law from Vrije Universiteit in Brussels.

4. I have overall responsibility of the Etihad Legal Department, which investigates claims against Etihad throughout the world and assists outside legal counsel in obtaining information and documents required during the course of litigation.

5. I submit this Declaration in support of Etihad's Motion to Dismiss Plaintiff's First Amended Complaint.

The Amended Complaint

6. I have reviewed the Complaint and the First Amended Complaint, and am fully familiar with this litigation and the proceedings in this case.

7. The First Amended Complaint asserts claims against (a) Etihad, (b) Deutsche Lufthansa A.G. ("Lufthansa"), and (c) Global Defense & Technology Systems, Inc., Global Strategies Group (United Kingdom) Limited and Global Strategies Group Holding S.A. (collectively "Global"). The claims against Etihad are for (1) breach of contract, (2) false imprisonment and/or arrest, (3) negligence, and (4) intentional infliction of emotional distress resulting from Plaintiff's arrest and conviction in Abu Dhabi, United Arab Emirates ("UAE") for possession of firearms without a license.

8. As to Etihad, Plaintiff seeks to recover compensatory and punitive damages based on allegations that Etihad failed to advise Plaintiff that he needed (1) a license/government approval to transport firearms to Abu Dhabi, UAE, and (2) a visa to enter Abu Dhabi, UAE.

Ownership of Etihad—Foreign Sovereign

9. I am fully familiar with the ownership, corporate structure and operations of Etihad at all relevant times.

10. Etihad is an air carrier in the business of international carriage of passengers, baggage and cargo to and from the UAE and other destinations.

11. Etihad is a legally constituted corporate entity, established by royal decree in July 2003, and is wholly owned by the Government of the UAE, with its principal place of business in Abu Dhabi, UAE. A copy of the Articles of Association of Etihad Airways (a Public Joint Stock Company), Emiri Decree No. 1 of 2003 establishing Etihad Airways and Emiri Decree No. 8 of 2004 amending Emiri Decree No. 1, are attached hereto as Exhibits “1”, “2” and “3”, respectively.

Etihad's Conditions of Carriage and Tariffs

12. Plaintiff entered into a contract of carriage with Etihad in Frankfurt, Germany on or about July 30, 2008 for one-way transportation from Frankfurt, Germany to Abu Dhabi, UAE on Etihad flight EY 002. *See also* Amended Complaint at 52-54.

13. It is my understanding that Plaintiff originally was scheduled to fly from Frankfurt to Dubai, UAE on Lufthansa, but chose to take the Etihad flight because the Lufthansa flight was cancelled and Plaintiff did not want to wait until the next day to travel to Dubai. *See also* Amended Complaint at 50-54.

14. Plaintiff's carriage on Etihad is governed by Etihad's General Conditions of Carriage (the “Conditions of Carriage”). Etihad's Conditions of Carriage in effect on July 30, 2008 are attached to the Amended Complaint as Exhibit “K”.

15. Article 8.3.2 of Etihad's Conditions of Carriage provides that: "Firearms (whether real, replica or toy), pellet guns, components of firearms, and ammunition other than for hunting and sporting purposes are prohibited from carriage as Baggage. Firearms and ammunition for hunting and sporting purposes may be accepted at our sole discretion as Checked Baggage..." *See Amended Complaint, Exhibit "K"*.

16. I am advised by competent legal counsel that the UAE Weapons Licensing Law, Fed. Law 11 of 1976, is applicable in both Abu Dhabi and Dubai and that Article 2 of this Law specifically provides that no person may own, carry or dispose of any firearms, ammunitions or explosives unless he obtains a license issued by the relevant UAE licensing authority.

17. Article 13 of Etihad's Conditions of Carriage required Plaintiff to obtain all required travel documents and comply with all laws, providing in relevant part:

13.1 GENERAL

13.1.1 You [the passenger] are responsible for obtaining and holding all required travel documents and visas and for complying with all applicable laws, regulations, orders, demands and travel requirements of all countries to be flown from, into or through which you transit.

13.1.2 We shall not be liable for the consequences to any Passenger resulting from his or her failure to obtain such documents or visas or to comply with such laws, regulations, orders, demands, requirements, rules or instructions.

* * *

13.5 CUSTOMS INSPECTION

If required, you shall attend inspection of your Baggage, by customs or other Government officials. We are not liable to you for any loss or damage suffered by you in the course of such inspection or through your failure to comply with this requirement.

See Amended Complaint, Exhibit “K”.

18. Article 15.5.2 of Etihad’s Conditions of Carriage further provides that Etihad “are not liable for any damage from our compliance with or your failure to comply with applicable laws or Government rules and regulations.” *See* Amended Complaint, Exhibit “K”.

19. Finally, Article 8.10 (entitled “Items Removed By Airport Security Personnel”) of Etihad’s Conditions of Carriage provides:

We will not be responsible for, or have any liability in respect of, articles removed from your Baggage, and/or retained, by airport security personnel.

See Amended Complaint, Exhibit “K”.

20. Etihad’s tariffs on file with the United States Department of Transportation in effect in July 2008 similarly required Plaintiff to obtain all necessary travel documents and comply with all relevant laws.

21. Etihad Tariff Rule 55 sections 55 A(D)(2) and 55 A(F) (a copy is attached hereto as Exhibit “4”) provide as follows:

55 A(D)(2) Carrier is not liable for any damage directly and solely arising out of its compliance with any laws, government regulations, orders, or requirements or from failure of passenger to comply with same, or any cause beyond carrier’s control.

* * *

55 A(F) MODIFICATION AND WAIVER

No agent, servant, or representative of carrier has authority to alter, modify, or waive any provisions of the contract of carriage of this tariff.

22. Etihad Tariff Rule 89 provides that the passenger is responsible for obtaining all necessary travel documents and complying with all governmental travel requirements. A

certified copy of Etihad Tariff Rule 89 is attached hereto as Exhibit "5". Tariff Rule 89 provides as follows:

Travel Documents

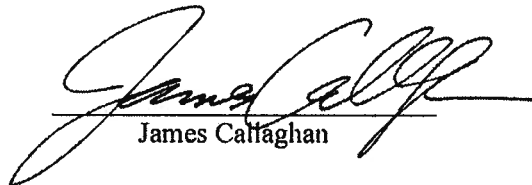
- (A) Each passenger desiring transportation across any international boundary is responsible for obtaining all necessary travel documents and for complying with the laws of each country flown from, through or into that he/she desires transportation.

* * *

- (2) EY (Etihad) is not liable for any assistance or information provided by any agent/employee of EY to any passenger relating to such documents or compliance with such laws or for the consequences to any passenger resulting from his/her failure to obtain such documents or to comply with such laws.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 26, 2010.


James Callaghan